

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

DOMINICK MAIDA, ET AL.

PLAINTIFFS

vs.

NO. 4:07CV001151 BSM

SAMANTHA SHERMAN, ET AL.

DEFENDANTS

**ORDER**

Pending before the court is plaintiffs' motion to strike defendants' answers or preclude their affirmative defenses for failure to respond to plaintiffs' discovery requests. Defendants have not responded to the motion.

*I. FACTUAL BACKGROUND*

Plaintiffs filed this action on November 29, 2007. Defendants, Jerry Johnson, Samantha Sherman, James Sherman, and Joe Vincent filed *pro se* answers on January 22, 2008. Plaintiffs propounded discovery requests on June 6, 2008. Plaintiffs contend that defendants have failed to respond to the discovery requests within the time required by the Federal Rules of Civil Procedure. .

*II. ANALYSIS*

Federal Rule of Civil Procedure 37(d) provides that the court may order sanctions if a party fails to respond to discovery requests. The sanctions include striking pleadings in whole or in part. See Fed. R. Civ. P. 37(d)(3).

The court is not persuaded that the imposition of such a severe sanction is warranted at this time. Defendants have not engaged in "blatant disregard of the Court's orders and the discovery rules" which would justify striking their answer. See *Chrysler Corp. v. Carey*, 186 F. 3d 1016, 1022 (8<sup>th</sup> Cir. 1999) (striking defendants'

pleadings and entering judgment against defendants on issue of liability warranted where defendants engaged in widespread abuse of discovery process). They have only, at this time, failed to timely respond to discovery requests. Most of the defendants are proceeding *pro se*. Plaintiffs did not move to compel defendants to respond and defendants have not violated any discovery orders. The court cannot find that defendants' failure to provide discovery responses was willful. Additionally, counsel recently entered an appearance for defendant Jerry Johnson. The record does not indicate that plaintiffs have attempted to confer with counsel in an attempt to resolve this dispute.

Based on these factors, the court denies plaintiffs' motion for sanctions but orders defendants to respond to the discovery requests within 20 days of the date of this order. Failure to comply with this order may result in the imposition of sanctions.

Accordingly, the motion for sanctions (Doc. No. 31) is hereby denied.

IT IS SO ORDERED this 22<sup>nd</sup> day of August, 2008.

A handwritten signature in cursive script, reading "Brian S. Miller", written in black ink.

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UNITED STATES DISTRICT JUDGE